

Meeting of the RAIL SERVICE COMPETITION COUNCIL

March 16, 2006 9:00 A.M.

Room 152

Montana State Capitol

COUNCIL MEMBERS PRESENT: Carla Allen, Evan Barrett, Larry Bonderud, Dan Bucks, Bill Fogarty, Ken Hansen, Russell Hobbs, Jim Lynch, Tom McGillvray, Doug Miller, Nancy Peterson, Michael O'Hara

COUNCIL MEMBERS ABSENT: All members present. Dan Bucks had other meetings to attend, and therefore Kory Hofland sat in for him as a non-voting Department of Revenue representative.

GUESTS PRESENT: Mark Cole, Kristina Davis, Errol Rice, Greg DeWitt, Dick Turner, Bob Stevens, Mary Whittinghill, George Paul, Steve Sheldon, Richard Owen, Spook Stevens, Howard Nash, Michael Opar, Mary Ann Fiehrer, Gary Schlaeger, Patricia Schlaeger

1.0 Chairman O'Hara called the meeting to order at 9:10 AM

2.0 Evan Barrett moved to approve the meeting minutes of December 20th, and January 19th 2006. The motions were seconded and passed by the council.

3.0 Agenda reviewed and changes noted.

4.0 Legislative intent report by Representative Tom McGillvray – Comments were made on the importance of developing a strategic plan for the Council to follow as well as the importance of the council's role in representing the captive shippers of Montana on a state and national level.

5.0 Call made to South Dakota representative. Introductions by the council were made. A brief history of the South Dakota situation was given; short line operations began to run under an operating agreement, on line that was not in use. Two of these operations are profitable, while one other is not. The core line was then sold to BNSF by the state. The State is currently working through the agreements with BNSF; they are currently in the "honeymoon" period of the deal. The State of South Dakota had nothing to do with the DM&E federal funding to build a new rail line.

6.0 Department of Transportation presentation: Presentation made by the Director of Transportation, Jim Lynch. The presentation was an overview of the rail situation in Montana.

7.0 Reviewed the Interstate Commerce Commission, Staggers Act, Surface Transportation Board abandonment and *de facto* abandonment

8.0 Railroad Taxation Briefing given by Dan Bucks, Larry Finch, and Kory

Hofland: Introduction given by Dan Bucks on the tax structure in Montana, and how it compares across the nation. Taxation of standing railcar stock was covered by Kory Hofland. There is no tax benefit for parking cars and calling them non-rolling stock. The taxation system is based on two factors, miles traveled within the state and the time it took for the cars to travel that distance. No tax reason determined for parking those cars in Montana. The value is in the enterprise, not in the pieces of that enterprise. Larry Finch gave the presentation on Montana Taxation of Railroads. Part one covered the property taxes on railroads on Montana. The total system value is calculated then Montana allocation factor is used to determine the allocated value to Montana. The Montana allocation factor is determined by the average of five ratios. This value is then allocated across taxing jurisdictions. Questions. Could relative rates charged by taken into the property tax framework? It would have to be dealt with on a corporation with monopoly powers. Dan Bucks believes that it may be possible under the 4R's act to have a tax policy of this nature.

9.0 Governor's Presentation to the Council 1:00 PM:

He has had it with BNSF claiming that Montana freight rates are the same as freight rates in the mid-West. He demonstrated how this statement is false by comparing actual freight rates from the mid-West with Montana freight rates. He then discussed the past meetings with the Chairman of the STB, and the lack of action they have taken to protect captive shippers. We are dealing with a monopoly and the agency that is supposed to be protecting the captive shippers is not doing its job. Rail freight rates are not correlated to distance traveled or diesel consumed. This disparity in shipping rates is costing Montanan shippers about \$75 million dollars a year. Let it be noted that no one from BNSF was in attendance to hear the concerns of the council or the public.

10.0 Call made to North Dakota:

Introductions of the Council members. The rate case they are pursuing, the timeline of that case, the cost of the case, and the transferability of that case? Filing a simplified rate case through the ST B. For this case they had to develop a hypothetical railroad to show what competition could do to rates. They believe that the first case to be brought will be substantially more expensive than following cases. Questions, what is your specific case, what shipper? They have not chosen yet, but they have it down to a couple possible shippers, the final announcement will come when the case is announced. Thank you for your help and cooperation.

11.0 Issues and Events:

The issues and events covered are as follows; Union Pacific update, Canadian Pacific update, Montana Rail Link update, BNSF update, Central Montana Railroad update, Watco update, report on Captive Shipper day in Washington DC by Richard Owen of the Montana Grain Growers Association, and a report on STB Chairman Buttery visit by Nancy Peterson. Richard reported that the meeting went well and that they were able to persuade 3 more senate members to vote for the federal senate railroad bill 919. The bill does have legs and will get a hearing in the commerce committee and should move out, the struggle will come in the house.

The event was a strong showing of multiple industries that are affected by the rail situation.

UP – Evan Barrett - Branch line operator is still considering taking over UP line to Butte, nothing new has occurred.

CP – Larry Bonderud – Headquartered in Calgary. Larry covered the lines that the CP operates as well as the partners that they work with. To move freight from Canada to multiple ports in the US, the CP would choose to work with the UP. Due to the large profits it is very possible that a large merger could happen in the future.

MRL – Evan Barrett – They are connected on both ends by BNSF, and in the middle as well. They have an interest in additional shipping where ever it is available in Montana. They have maintained that dialog with the State. Howard Nash of MRL - traffic in Montana, they handle around 300,000 units per year. They originate and terminate around 70,000 cars.

BNSF – Larry Bonderud – Members of the board were in Shelby last month to determine how to increase train speeds in the highline area, Shelby and Loral. This may be an opportunity for Montana. The State may be able to play a role in this to help our cause.

CMR – Carla Allen – MRL is preceding as usual, the Governor stopped in after his meeting in Denton. A history of the line was also given.

Watco – Steve Sheldon - They are a large short line provider who works throughout the nation and with all major railroads. They have been evaluating the short line from Plentywood to Scobey to see what it would cost to repair the line, and what the market for freight on that line could be.

STB Chairman Buttery visit - Nancy Peterson – We hosted Chairman Buttery, flew the Helena to Great Falls line, and proceeded onto the meeting in Denton. The group had an opportunity to look at the issues with this line and the parked rail cars along those lines.

12.0 Discussion of Councils Activities to meet Legislative intent: The larger mission here is to be the voice of Montana captive shippers. We should work on a recommendation to the legislature on what this council should do and what its future direction should be, due to the nature of this issue. We will need to use a consultant to put a plan together, which brings up the question of funding and time available. Funding and information will be the foundation of the development of a long term plan for solving this issue. Identify the things that we can do right now with the resources we have, and then identify what we would like to accomplish in the future and how we will get to those accomplishments.

13.0 Next Meeting Scheduled

13.1 Time and Place: May 11, 2006 at 9 A.M.

13.2 Agenda: Get it out for review on

14.0 Meeting Adjourned